

Terms and Conditions for the Purchase of Goods - Bernstein Limited

1 Interpretation

1.1 In these Terms:

1.4 "Bernstein" means Bernstein Limited, the purchaser of the Goods, whose details are as stated in the Order;

1.2 "Contract" means the contract for the sale and purchase of the Goods, incorporating these Terms;

1.3 "Delivery Address" means the address stated on the Order;

1.5 "Goods" means any goods and/or services (including any part or parts of them) described in the Order;

1.6 "Order" means Bernstein's purchase order to which these Terms are attached;

1.7 "Price" means the price of the Goods;

1.8 "Seller" means the person, firm or company so described in the Order;

1.9 "Specification" includes any plans, drawings, data or other information relating to the Goods;

1.10 "Terms" means the standard terms of purchase set out in this document;

1.11 "Writing" includes telex, cable, facsimile transmission, email communication and comparable durable means of communication.

1.12 A reference to a clause is to a clause of these Terms.

1.13 Any reference to a "party" means a party to the Contract and "parties" shall be construed accordingly.

1.14 Words in the singular include the plural and in the plural include the singular.

1.15 Any reference in these Terms to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

1.16 The headings in these Terms are for convenience only and shall not affect their interpretation.

2 Basis of purchase

2.1 The Order constitutes an offer by Bernstein to purchase the Goods subject to these Terms.

2.2 These Terms shall apply to the Contract to the exclusion of any other terms on which any quotation has been given to Bernstein or subject to which the Order is accepted or purported to be accepted by the Seller.

2.3 The Order will lapse unless unconditionally accepted by the Seller in Writing within 14 days of its date.

2.4 No variation to the Order or these Terms shall be binding unless agreed in Writing between the authorised representatives of Bernstein and the Seller.

2.5 A contract for the purchase of the Goods will be established on these Terms when:

2.5.1 the Seller accepts the Order pursuant to the provisions of clause 2.3; or

2.5.2 (if earlier) by the Seller delivering the Goods to Bernstein (or commencing performance of any services for Bernstein).

3 Specification

3.1 The quantity, quality and description of the Goods shall, subject as provided in these Terms, be as specified in the Order and/ or in any applicable Specification supplied by Bernstein to the Seller or agreed in Writing by Bernstein.

3.2 Any Specification supplied by Bernstein to the Seller, or specifically produced by the Seller for Bernstein, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of Bernstein, and the Seller assigns with full title guarantee to Bernstein all such copyright, design rights and other intellectual property for no further consideration, subject only to the payment of the Price. The Seller shall not disclose to any third party or use any

such Specification except to the extent that it is or becomes public knowledge through no fault of the Seller.

3.3 The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods.

3.4 The Seller shall not unreasonably refuse any request by Bernstein to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to despatch, and the Seller shall provide Bernstein with all facilities reasonably required for inspection and testing.

3.5 If as a result of inspection or testing Bernstein is not satisfied that the Goods will comply in all respects with the Contract, and Bernstein so informs the Seller within seven days of inspection or testing, the Seller shall take such steps as are necessary to ensure compliance.

3.6 The Goods shall be marked in accordance with Bernstein's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition.

4 Price of the Goods

4.1 The Price of the Goods shall be as stated in the Order and, unless otherwise so stated, shall be:

4.1.1 exclusive of any applicable value added tax (which shall be payable by Bernstein subject to receipt of a VAT invoice); and

4.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties or levies other than value added tax.

4.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuations in rates of exchange or otherwise) without the prior consent of Bernstein in Writing.

4.3 Bernstein shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller, whether or not shown on its own terms of sale.

5 Terms of payment

5.1 Bernstein will pay the price of the Goods within 60 days of delivery of the Goods to Bernstein, (and/or, if the Contract requires the Seller to provide services to Bernstein, payment for said services will be made pursuant to this clause 5.1 within 60 days of completion of the performance of said services, as applicable) but time for payment shall not be of the essence of the Contract.

5.2 Without prejudice to any other right or remedy, Bernstein reserves the right to set off any amount owing at any time from the Seller to Bernstein against any amount payable by Bernstein to the Seller under the Contract.

5.3 If any sum under the Contract is not paid when due, the Seller shall not be entitled to suspend delivery of the Goods (or the performance of any services) as a result of any sums being outstanding.

6 Delivery

6.1 The Goods shall be delivered to, and any services shall be performed at, the Delivery Address on the date or within the period stated in the Order, in either case during Bernstein's usual business hours.

6.2 Where the date of delivery of the Goods (or of performance of any services) is to be specified after the placing of the Order, the Seller shall give Bernstein reasonable notice of the specified date.

6.3 The time of delivery of the Goods and of performance of any services is of the essence of the Contract.

6.4 A packing note quoting the Order number must accompany each delivery or consignment of the Goods and must be displayed prominently.

6.5 If the Goods are to be delivered by instalments, the Contract will be treated as a single contract and shall not be severable.

6.6 Bernstein may reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until Bernstein has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

6.7 The Seller shall supply Bernstein in good time with any instructions or other information required to enable Bernstein to accept delivery of the Goods.

6.8 Bernstein shall not be obliged to return to the Seller any packaging or packing materials for the Goods, whether or not any Goods are accepted by Bernstein.

6.9 If the Goods are not delivered on the due date then, without limiting any other remedy and without prejudice to any of the provisions of clause 9, Bernstein shall be entitled to terminate the Contract by giving written notice to the Seller without any liability to the Seller whatsoever or howsoever arising and any deposit or other moneys paid by Bernstein to the Seller shall become immediately due and refundable to Bernstein by the Seller.

7 Risk and Property

7.1 The Goods shall remain at the risk of the Seller until delivery to Bernstein is complete (including off-loading and stacking) when ownership of the Goods shall pass to Bernstein.

7.2 The Seller shall, throughout the Contract, maintain a policy of insurance which shall contain terms appropriate to provide adequate coverage for any and all risks, damage and loss contemplated in clause 7.1 above and which shall also be of an amount sufficient to provide adequate coverage for any and all such risks, damage and/or loss. The Seller shall, upon request by Bernstein, produce such policy of insurance to Bernstein for inspection.

8 Warranties and liability

8.1 The Seller warrants to Bernstein that the Goods:

8.1.1 will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Seller or made known to the Seller in Writing at the time the Order is placed;

8.1.2 will be free from defects in design, material and workmanship;

8.1.3 will correspond with any relevant Specification or sample;

8.1.4 will comply with all statutory requirements and regulations relating to the sale of the Goods; and

8.1.5 if the Contract requires the Seller to provide services to Bernstein, then the Seller

shall, throughout the duration of the Contract, perform the services in a good and workmanlike manner.

8.2 Without limiting any other remedy, if any Goods are not supplied or performed in accordance with the Contract, then Bernstein shall be entitled:

8.2.1 to require the Seller to repair the Goods or to supply any replacement Goods (or to re-perform any services) within seven days of Bernstein giving notice to the Seller; or

8.2.2 at Bernstein's sole option, and whether or not Bernstein has previously required the Seller to repair the Goods or to supply any replacement Goods (or to re-perform any services), to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.

8.3 The Seller shall indemnify Bernstein in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by Bernstein as a result of or in connection with:

8.3.1 breach of any warranty given by the Seller in relation to the Goods:

8.3.2 any claim that the Goods infringe, or their importation, use or resale infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by Bernstein;

8.3.3 any liability under the Consumer Protection Act 1987 in respect of the Goods;

8.3.4 any liability in relation to the statutory conditions implied in favour of Bernstein by section 2 of the Supply of Goods and Services Act 1982; and

8.3.5 any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods.

8.4 Bernstein reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Bernstein including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

9 Cancellation and Termination

9.1 Bernstein may cancel the Contract in respect of all or part only of the Goods by giving notice to the Seller at any time prior to delivery or performance, in which event Bernstein's sole liability shall be to pay to the Seller the Price for the Goods in respect of which Bernstein has exercised its right of cancellation, less the Seller's net saving of cost arising from cancellation.

9.2 If at any time the Seller shall: a) commit a breach of any obligation arising hereunder; or b) become insolvent, be subject to a petition in bankruptcy filed by or against him or be placed under the control of a receiver, liquidator or committee of creditors; then Bernstein may, if it so elects, terminate the Contract by written notice. The Seller shall have fourteen (14) days to correct the default (if the default is capable of remedy), failing which termination shall take effect at the end of the fourteen (14) day period.

10 General

10.1 The Seller shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract.

10.2 The Contract constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements and understandings between the parties. The Seller acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Bernstein which is not set out in the Contract.

10.3 Any notice or other communication given to a party under or in connection with the Contract shall be in Writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in Writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier, fax or e-mail. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to above; if sent by pre-paid first-class post or recorded delivery on the second business day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one business day after transmission.

10.4 No forbearance or indulgence granted by Bernstein to the Seller shall in any way limit the rights of Bernstein under these Terms.

10.5 Neither Bernstein nor the Seller intends that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

10.6 If any provision of these Terms is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.

10.7 Unless otherwise agreed in writing the Contract shall in all respects be construed and operated as an English contract and in conformity with English law.